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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re Marriage of DUSTIN TYLER SMITH
and HAYLEY MARCELO OCTAVIA
ACCOM,

DUSTIN TYLER SMITH

Plaintiff and Respondent,

v.

HAYLEY MARCELO OCTAVIA ACCOM,

Defendant and Appellant,

D054109

(Super. Ct. No. DN150744)

APPEAL from a judgment of the Superior Court of San Diego County, Earl H. Maas,
Judge. Reversed and remanded with directions.

Hayley Marcelo Octavia Accom appeals from a judgment annulling her marriage to
Dustin Tyler Smith. Accom claims that the particular fraud alleged by Smith did not go to
the very essence of the marriage relation and that the court should have granted a divorce.
We agree and reverse the judgment of nullity.

FACTUAL AND PROCEDURAL BACKGROUND

Smith, a Marine, started dating Accom after returning from deployment to Iraq. Accom is not a United States citizen and was in the country on a visitor's visa. The couple married about two months later, but they separated after three months of marriage. Smith filed a petition seeking either dissolution of the marriage or an annulment. Smith testified that he had made a mistake by marrying Accom. He claimed that Accom misrepresented being in the country on a work visa and had married him to obtain a "green card." She denied marrying Smith to obtain a green card. Accom testified that she came to America to obtain medical care, and that she married Smith because she loved him. Accom asserted that Smith had married her to collect additional military pay based on his marital status, never supported her financially, and committed adultery.

After considering the evidence, the trial court found that the parties married "under [a] fraudulent representation." It entered a judgment of nullity stating that sufficient grounds existed to grant an annulment. Accom timely appealed.

DISCUSSION

I. Standard of Review

No statement of decision was requested in this action. In the absence of a statement of decision, established rules of appellate review require us to presume the court made whatever factual findings necessary to support the judgment. (*In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 647.) Additionally, where an appellant challenges the sufficiency of the evidence, we must start with the presumption that the record contains

evidence sufficient to support the judgment; it is the appellant's burden to demonstrate otherwise. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

II. Analysis

Accom contends that the trial court erred in nullifying the marriage under Family Code section 2210, subdivision (d). (Undesignated statutory references are to this code.) She asserts that even assuming the truth of Smith's allegation that she married him to obtain a green card, this type of fraud is insufficient to support a judgment of nullity. We agree.

A marriage may be adjudicated a nullity if, at the time of the marriage, "[t]he consent of either party was obtained by fraud" (§ 2210, subd. (d).) The showing of fraud necessary to warrant nullification must be of a type that "goes to the very essence of the marriage relation" (*Marshall v. Marshall* (1931) 212 Cal. 736, 739.) Additionally, because public policy strongly favors marriage, any fraud must be shown by clear and convincing evidence. (*Williams v. Williams* (1960) 178 Cal.App.2d 522, 525.)

Annulments based on fraud are granted only in cases where the fraud relates in some way to the sexual, procreative or child-rearing aspects of marriage. (*Millar v. Millar* (1917) 175 Cal. 797, 800-801 [wife concealed from husband at time of marriage that she did not intend to have sexual relations with him]; *In re Marriage of Ramirez* (2008) 165 Cal.App.4th 751, 759 [husband married wife while having love affair with wife's sister, which he intended to continue after the marriage]; *Handley v. Handley* (1960) 179 Cal.App.2d 742, 747-748 [concealment of intention not to live in the same house with the other spouse]; *Schaub v. Schaub* (1945) 71 Cal.App.2d 467, 477-479 [concealment of intention not to terminate an intimate relationship with a third person after the marriage]; *Vileta v. Vileta*

(1942) 53 Cal.App.2d 794, 796 [concealment of sterility].) In contrast, fraud that does not go to a matter that the state deems vital to the marriage relationship is insufficient for an annulment. (*In re Marriage of Meagher & Maleki* (2005) 131 Cal.App.4th 1, 3 [husband's alleged financial misrepresentations and fraudulent inducement of wife's investments in business ventures did not constitute fraud warranting annulment]; *In re Marriage of Johnston* (1993) 18 Cal.App.4th 499, 500-502 [nullity judgment reversed where husband allegedly concealed severe drinking problem, and that he did not intend to work for a living, even though the wife also alleged an unsatisfactory sex life].)

We have found several cases supporting nullity judgments where, at first blush, the fraud did not appear to pertain to the sexual or procreative aspects of the marriage; however, a closer look at the facts revealed that the fraud also touched these components of the marital relationship. In *Douglass v. Douglass* (1957) 148 Cal.App.2d 867, the appellate court concluded that an annulment was warranted where the husband, before the marriage, had falsely represented to the wife that he was "an honest, law abiding, respectable and honorable man," who had fathered one child in a prior marriage, a child who was "well provided for." (*Id.* at p. 868.) In fact, the husband had recently been convicted of grand theft, and was arrested for a parole violation shortly after the marriage for failure to pay child support for his two children from a prior marriage. (*Ibid.*) The appellate court relied in part on the premise that the "essentials of the marital relationship," from the wife's perspective, necessarily included a "husband of honorable character whom she could respect and trust, . . . and who would be a suitable stepfather for her children." (*Id.* at pp. 869-870.) Those "hopes were shattered and her purposes defeated" when she learned that her new

husband had failed to provide for his own children. (*Id.* at p. 870.) Additionally, an appellate court affirmed a judgment of nullity where substantial evidence supported the trial court's finding that a man fraudulently induced his wife to marry him solely to obtain a green card; however, the record included substantial evidence that the husband never intended to carry out his marital duties, "especially the duties to remain faithful to [her] and to remain married to her." (*In re Marriage of Rabie* (1974) 40 Cal.App.3d 917, 922-923; also, *In re Marriage of Liu* (1987) 197 Cal.App.3d 143, 156 [wife married husband in Taiwan to acquire a green card, and concealed intention not to engage in sexual relations].)

Here, the trial court granted the annulment based on a fraudulent representation, but did not specify which party's consent to the marriage had been fraudulently obtained. Turning to the evidence, Smith testified that Accom married him to obtain a green card; however, he presented no evidence showing any fraud by Accom going to the very essence of the marital relationship. Even assuming the truth of Smith's contention that Accom married him with the secret intent to obtain a green card, standing alone, this type of fraud is insufficient to support a judgment of nullity.

Similarly, while Accom presented evidence that after the marriage Smith disregarded his duty to remain faithful, there is no evidence from which the trial court could reasonably infer that Smith married Accom while maintaining an intimate relationship with another woman and thus harbored a secret intent to ignore his obligation to remain faithful. (§ 720 [marital contract includes "obligations of mutual respect, fidelity, and support"].) Although a marriage includes an implied "promise to fulfill the commonly understood obligations of husband or wife, the failure to fulfill them is not actionable fraud, that is to say, it does not

make out a case of a promise made without intention to fulfill it, . . . so as to furnish a sufficient ground for annulment. [Citations.] In the latter case it was said that the doctrine of *caveat emptor* governs, and forecloses reliance upon express or implied representations of either of the parties as a ground for annulment. This is not too strict a rule in view of the fact that the divorce laws provide a means of escape from unsuccessful alliances." (*Schaub v. Schaub, supra*, 71 Cal.App.2d at p. 476.)

Here, there is no clear and convincing evidence of fraud by either party sufficient to support the granting of an annulment. Accordingly, the judgment of nullity is reversed and the matter remanded with directions that the court enter a judgment of dissolution.

DISPOSITION

The judgment of nullity is reversed and the matter remanded with directions that the court enter a judgment of dissolution.

McINTYRE, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.